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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,584	06/03/2002	Peter Kancsar	ATM-2239	2928

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Fisher, Christen & Sabol
1725 K. Street NW
Washington, DC 20006

EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/04/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,584

Applicant(s)

KANCSAR ET AL.

Examiner

Jimmy G Foster

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3728

1. Claims 15-32 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 15, lines 13-14, the limitation, "with the opening aid corresponds with the recess opening" makes no idiomatic sense, and is vague since it is unclear what structure is being required in the claim by the term "corresponds."

In claim 17, the limitation, "wherein the surface parts is pressed out" does not make idiomatic sense.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15-17, 22, 23 and 32 are rejected under 35 U.S.C. § 102(b) as being anticipated by De Felice (4,231,477). In the reference of De Felice, there is a blister pack described including blister recesses 4, a flat shoulder surface/film 2, a cover/covering film 3, and incision patterns 6. The shoulder and recesses together constitute the *base part* of the pack. The incision patterns form cutting points (col. 2, line 10-17) and an edge 7 which will puncture the film. Therefore, the cutting points and edges 7 may be said to constitute *opening aids*. The triangular panel which includes

Art Unit: 3728

these opening aids may be considered to constitute a *surface element* insofar as Applicant has claimed.

Each of the recesses on its *concave side* is covered by the cover film.

The incision patterns 6 are formed by corner-shaped incisions, as shown in Figure 1. The examiner asserts that incisions constitute intersecting *weakening lines* since they will weaken the base part of the pack.

After forming the recesses in the base part and after forming the opening aids 6,7, which includes making the weakening lines/incisions, the base part is punched out (i.e. cut-out). See column 1, line 64 through col. 2, line 9.

In addition, there is provided a *fold line* for each said incision pattern, as shown in Figures 2 and 3, with which each triangular portion/*surface element* of the base part is bent/swiveled out of the plane of the base part to the concave side of the recesses. As the package is flexed (in Figure 3) the opening aid will "correspond" with the recess.

It is to be noted that the fold lines shown in Figures 2 and 3 are bent by the patient (col. 2, lines 13-14). The opening aids/surface elements once bent, as is shown in Figures 2 and 3, are therefore capable of being bent by the patient again along such fold lines to the convex side of the recesses since the material is only plastic sheet. This capability of bending on the convex side reads on what Applicant has claimed in claim 16 since the claimed bending in the limitation, "is folded down from the blister pack and swiveled to the concave and convex sides of the recess" is recited in the manner as intended use and not as structure in the claim. The reason that the limitation must be read as intended use is based upon the limitation claiming

Art Unit: 3728

the swiveling as being to both the concave and convex sides. If the limitation were to be read as structure, the limitation would be contradictory since at any point in time the surface element/opening aid must be on the concave side or the convex side, but cannot be on both sides at the same time.

The capability also reads on what is claimed in claim 17 since the claimed folding constitutes intended use and not structure in the claim because, again, the folding is on both the concave and convex sides.

Regarding claim 22 which calls for plural fold lines, the four cutting points of De Felice may be considered to define an opening aid folded out of the plane of the base part.

Regarding claim 23, insofar as claimed, the triangular elements of De Felice which are bent/folded out of the base part may be considered to define wings.

In use the blister of De Felice is *rolled up* (more than is shown in Figure 3) so that a selected opening aid will puncture the covering film 3 over a respective recess 4. Regarding Applicant's claim 32, the reference of De Felice describes using the blister pack. See column 2, lines 10-20.

4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3728

5. Claims 30 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over De Felice (4,231,477) in view of published PCT document No. 96/25254 to Reiterer et al. The abstract of the reference of Reiterer et al suggests that the material for making the base part of a blister pack may be composite material, including an aluminum material for the purpose of permitting the recesses to be molded by cold forming. Accordingly, it would have been obvious in view of Reiterer et al to have made the base part of De Felice from such a composite material for the purpose of permitting the recesses of the base part to be made by cold forming.

6. Claims 18-21 and 24-29 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims. Regarding, claim 21, the semi-circular weakening line is treated as being positively recited structure in the claim.

7. Applicant's arguments filed on November 12, 2003 have been fully considered but they are not deemed to be persuasive. Applicant has argued that the opening aid of De Felice is placed over the recess opening by flexing the blister pack and not by swiveling it about a fold line. However, this argument involves the use of the package. Furthermore, the claims of Applicant do not prohibit package flexing.

Inasmuch as the opening aid/surface element of De Felice is folded about the fold line, shown in Figure 2 of the reference, and also inasmuch as

Art Unit: 3728

the opening aid is will contact the film cover portion over the package recess by flexing the package, Applicant's claim language fails to distinguish over the package disclosed by Felice.

In addition, the triangular surface element of De Felice is not only capable of being folded out of the plane of the package at the base fold line of the triangle, it is also capable of being folded back along the cover film over the closest recess. Note in Figure 3 that the distance from the point of the opening aid to the fold line is shown to be greater than the distance between the fold line and the recess. However, even if the point of the opening aid would not capable of extending over the closest recess by merely folding the triangle at the base fold line. Applicant's claimed subject matter fails distinguish over the package of De Felice.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

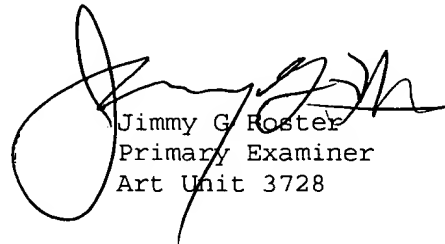
A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

• Art Unit: 3728

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Jimmy G. Roster
Primary Examiner
Art Unit 3728

JGF
2 February 2004